

REMARKS

1. Present Status of Patent Application

This is a full and timely response to the outstanding non-final Office Action mailed February 9, 2005. Reconsideration and allowance of the application and presently pending claims are respectfully requested.

2. Examiner Interview

Applicant first wishes to express sincere appreciation for the time that Examiner Nawaz and Supervising Examiner Alam spent with Applicant's Attorney, Charles Griggers, during a telephone discussion on April 6, 2005 regarding the outstanding Office Action. During that conversation, the *Lawrence* reference was discussed in relation to claim 11. With regard to the limitations of claim 11, the Supervising Examiner agreed that all of the limitations of claim 11 are not disclosed in the *Lawrence* reference. Accordingly, arguments are presented herein asserting that the *Lawrence* reference does not disclose all of the limitations of claim 11 and the other pending claims. Thus, Applicant respectfully requests that Examiner Nawaz carefully consider the following arguments and amendments.

3. Response To Objections of Claims 1-10

Claims 1-10 were objected for having an informality in independent claim 1. Accordingly, claim 1 has been amended to address the informalities cited in the Office Action. In that the objections are believed to have been overcome, Applicant respectfully requests that the objections of these claims be withdrawn.

4. Response To Rejections of Claims 1-5, 7-15, and 17-19 Under 35 U.S.C. § 102(e)

In the Office Action, claims 1-5, 7-15, and 17-19 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by *Lawrence* (U.S. Patent No. 6,628,935). For a proper rejection of a claim under 35 U.S.C. Section 102, the cited reference must disclose all elements/features/steps of the claim. *See, e.g., E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 7 U.S.P.Q.2d 1129 (Fed. Cir. 1988).

a. Claim 1

As provided in independent claim 1, Applicant claims:

An apparatus for sending a message to a wireless device over a wireless network, the apparatus comprising:

a gateway for receiving the message transmitted over an external network in communication with the gateway, ***the message including a deletion instruction to delete the message if the message is not delivered to the wireless device***, for attempting to deliver the message to the wireless device over the wireless network, and ***for carrying out the deletion instruction by deleting the message***.

(Emphasis added).

Applicant respectfully submits that independent claim 1 is allowable for at least the reason that *Lawrence* does not disclose, teach, or suggest anywhere in the specification or in the figures at least the features of a “message including a deletion instruction to delete the message if the message is not delivered to the wireless device” and “a gateway . . . for carrying out the deletion instruction by deleting the message,” as recited in claim 1.

Rather, *Lawrence* discloses a system “where messages are deleted from the wireless communication network if they have been undeliverable for a period of time.” Col. 6, lines 23-25. Accordingly, *Lawrence* fails to disclose the feature of a gateway deleting a message according to a deletion instruction that is included in the message. For at least this reason alone, *Lawrence* does not anticipate claim 1. Therefore, the rejection of claim 1 should be withdrawn.

c. Claims 2-5 and 7-10,

Because independent claim 1 is allowable over the cited art of record, its dependent claims 2-5 and 7-10 are allowable as a matter of law, for at least the reason that the dependent claims 2-5, and 7-10 contain all the features and elements of their respective independent claim 1. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Additionally and notwithstanding the foregoing allowability of claims 2-5, and 7-10, these dependent claims recite further features and/or combinations of features (as is apparent by examination of the claim itself) that are patentably distinct from the cited art of record. Hence, there are other reasons why these dependent claims are allowable.

d. Claim 11

As provided in independent claim 11, Applicant claims:

An apparatus for sending a message to a wireless device over a wireless network, the apparatus comprising:

a gateway for receiving the message transmitted over an external network in communication with the gateway, ***the message including a deletion instruction to delete the message if the message is not delivered to the wireless device***, for determining whether the wireless device is capable of receiving the message, and ***for carrying out the deletion instruction by deleting the message if the wireless device is not capable of receiving the message.***

(Emphasis added).

Applicant respectfully submits that independent claim 11 is allowable for at least the reason that *Lawrence* does not disclose, teach, or suggest anywhere in the specification or in the figures at least the features of a “message including a deletion instruction to delete the message if the message is not delivered to the wireless device” and “a gateway . . . for carrying out the deletion instruction by deleting the message if the wireless device is not capable of receiving the message,” as recited in claim 11.

Rather, *Lawrence* discloses a system “where messages are deleted from the wireless communication network if they have been undeliverable for a period of time.” Col. 6, lines 23-25. Accordingly, *Lawrence* fails to disclose the feature of a gateway deleting a message according to a deletion instruction that is included in the message if the wireless device is not capable of receiving the message. For at least this reason alone, *Lawrence* does not anticipate claim 11. Therefore, the rejection of claim 11 should be withdrawn.

e. Claim 12

As provided in independent claim 12, Applicant claims:

An apparatus for sending a message to a wireless device over a wireless network, the apparatus comprising:

a gateway for receiving the message transmitted over an external network in communication with the gateway, ***the message including a deletion instruction to delete the message if the message is not delivered to the wireless device***, for attempting to deliver the message to the wireless device over the wireless network, and ***for carrying out the deletion instruction by deleting the message and returning the message over the external network.***

(Emphasis added).

Applicant respectfully submits that independent claim 12 is allowable for at least the reason that *Lawrence* does not disclose, teach, or suggest anywhere in the specification or in the figures at least the features of a “message including a deletion instruction to delete the message if the message is not delivered to the wireless device” and “a gateway . . . for carrying out the deletion instruction by deleting the message and returning the message over the external network,” as recited in claim 12.

Rather, *Lawrence* discloses a system “where messages are deleted from the wireless communication network if they have been undeliverable for a period of time.” Col. 6, lines 23-25. Accordingly, *Lawrence* fails to disclose the feature of a gateway deleting a message according to a deletion instruction that is included in the message and returning the message. For at least this reason alone, *Lawrence* does not anticipate claim 12. Therefore, the rejection of claim 12 should be withdrawn.

f. Claim 13

As provided in independent claim 13, Applicant claims:

A method of sending a message to a user of a wireless device over a wireless network, the method comprising:

receiving the message including a deletion instruction to delete the message if the message is not delivered to the wireless device;

attempting to deliver the message to the wireless device over the wireless network; and

deleting the message.

(Emphasis added).

Applicant respectfully submits that independent claim 13 is allowable for at least the reason that *Lawrence* does not disclose, teach, or suggest anywhere in the specification or in the figures at least the features of “receiving the message including a deletion instruction to delete the message if the message is not delivered to the wireless device,” as recited in claim 13.

Rather, *Lawrence* discloses a system “where messages are deleted from the wireless communication network if they have been undeliverable for a period of time.” Col. 6, lines 23-25. Accordingly, *Lawrence* fails to disclose the feature of a gateway deleting a message according to a deletion instruction that is included in the message. For at least this reason alone,

Lawrence does not anticipate claim 13. Therefore, the rejection of claim 13 should be withdrawn.

g. Claims 13-15 and 17-18

Because independent claim 12 is allowable over the cited art of record, its dependent claims 13-15 and 17-18 are allowable as a matter of law, for at least the reason that the dependent claims 13-15 and 17-18 contain all the features and steps of their respective independent claim 12. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Additionally and notwithstanding the foregoing allowability of claims 13-15 and 17-18, these dependent claims recite further features and/or combinations of features (as is apparent by examination of the claim itself) that are patentably distinct from the cited art of record. Hence, there are other reasons why these dependent claims are allowable.

h. Claim 19

As provided in independent claim 13, Applicant claims:

A method of sending a message to a user of a wireless device over a wireless network, the method comprising:

receiving the message including a deletion instruction to delete the message if the message is not delivered to the wireless device, wherein the deletion instruction is provided by a sender of the message;

determining whether the wireless device is capable of receiving the message immediately; and

deleting the message if the wireless device is not capable of receiving the message immediately.

(Emphasis added).

Applicant respectfully submits that independent claim 19 is allowable for at least the reason that *Lawrence* does not disclose, teach, or suggest anywhere in the specification or in the figures at least the features of “receiving the message including a deletion instruction to delete the message if the message is not delivered to the wireless device, wherein the deletion instruction is provided by a sender of the message; determining whether the wireless device is capable of receiving the message immediately; and deleting the message if the wireless device is not capable of receiving the message immediately,” as recited in claim 19.

Rather, *Lawrence* discloses a system “where messages are deleted from the wireless communication network if they have been undeliverable for a period of time” and not

immediately. Col. 6, lines 23-25. Accordingly, *Lawrence* fails to disclose the feature of a gateway deleting a message if a wireless device is not capable of receiving the message according to a deletion instruction that is included in the message. For at least this reason alone, *Lawrence* does not anticipate claim 19. Therefore, the rejection of claim 19 should be withdrawn.

5. Response To Rejections of Claim 6 and 16 Under 35 U.S.C. § 103(a)

In the Office Action, claims 6 and 16 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Lawrence* in view of *Hung* (U.S. Patent No. 6,772,143). For a proper rejection of a claim under 35 U.S.C. § 103, the teachings of the cited art references must suggest all features of the claimed subject matter to one of ordinary skill in the art. *See, e.g., In re Dow Chemical*, 837 F.2d 469, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 642 F.2d 413, 208 U.S.P.Q. 871, 881 (C.C.P.A. 1981).

Because independent claims 1 and 13 are allowable over the cited art of record, their respective dependent claims 6 and 16 are allowable as a matter of law, for at least the reason that dependent claims 6 and 16 contain all the features of their respective independent claims 1 and 13. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Additionally and notwithstanding the foregoing allowability of claims 6 and 16, these dependent claims recite further features and/or combinations of features (as is apparent by examination of the claim itself) that are patentably distinct from the cited art of record. Hence, there are other reasons why these dependent claims are allowable.

6. Newly Added Claim 20

Claim 20 has been newly added to further define and/or clarify the scope of one embodiment. Because independent claims 19 is allowable over the cited art of record, dependent claim 20 is allowable as a matter of law for at least the reason that the dependent claim 20 contains all the respective features of claim 19.

7. Cited Art Made of Record

The cited art made of record has been considered, but is not believed to affect the patentability of the presently pending claims.

CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicant respectfully submits that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims 1-20 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. In addition, Applicant reserves the right to address any comments made in the Office Action that were not specifically addressed herein. Thus, such comments should not be deemed admitted by the Applicant. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned agent at (770) 933-9500.

Respectfully submitted,



Jeffrey R. Kuester, Reg. No. 34,367

**THOMAS, KAYDEN,
HORSTEMEYER & RISLEY, L.L.P.**
Suite 1750
100 Galleria Parkway N.W.
Atlanta, Georgia 30339
(770) 933-9500